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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.50 of 2006

State: rep.by
The Inspector of Police
Vaduvur Police Station
Thiruvarur District
(crime No.533/1999) .Appellant /Complainant

-vs-

Kalaiarasan .. Respondent /Accused

This appeal is filed U/S 378 Cr PC against the Judgment made in S.C.No.230/2001 dated 22.09.2003 on the file of the Assistant Sessions Judge, Thiruvaur.

For appellant : Mr.V.R.Balasusbramaniam
Additional Public Prosecutor
For respondent : Mr.D.Veerasekaran

JUDGMENT

The State, who has preferred an appeal against the order of acquittal against the accused, who has faced the charge under Sections 366A,376 and 506(ii) of IPC in S.C.No.230 of 2001 on the file of Assistant Sessions Judge, Thiruvarur, is the appellant herein.

2. After taking cognizance of the offence, the learned Committal Magistrate, on appearance of the accused, had furnished the copies under Section 207 of Cr.P.C. and since the case is exclusively triable by the Court of Sessions, had committed under Section 209 of Cr.P.C.. On appearance before the learned Sessions Judge, the charges under Sections 366A, 376, and 506(ii) of IPC, were framed against the accused and when questioned, the accused pleaded not guilty.

3. On the side of the Prosecution , P.Ws 1 to 18 were examined. Exs P1 to P21 were exhibited and M.Os 1 to 5 were marked.

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4. P.W.1 is the mother of the victim girl"A" a minor girl, who was studying in III Standard at the time of the occurrence. On 17.11.1999 at about 5.30p.m., when P.W.1 had returned from her agricultural coolly work, she found her daughter"A" has stained with blood in her inskirt,when enquired, her daughter had informed that the accused had kidnapped her to the house of Kanagambal and committed an offence of rape on the verandah of Kanagambal's house. She (P.W.1) had taken the victim girl to Doctor Ashok Kumar at Mannargudi, who had given first aid to her and advised her (P.W.1) to take her (P.W.2) to Tanjore Medical College Hospital. On 17.11.1999/18.11.1999 at about 1.00 a.m, the victim girl was admitted in the Medical College Hospital, Tanjore and on the next day ie., on 18.11.1999 police came to the hospital and received the complaint Ex P1 from her(P.W.1).

4a. P.W.2 the victim girl, who had also corroborated the evidence of P.W.1 to the effect that on the date of occurrence, the accused took her to the house of Kanagambal and committed an offence of rape on the verandah of the house of Kanagambal and that she was taken to Doctor Ashok Kumar, who gave an injection and referred her to Government Hospital at Tanjore where her mother had preferred a complaint to the police, who visited there on the next day and M.O.1 is the polyster blood stained inskirt.

4b. P.W.3 is the father of P.W.2 victim girl. According to him, he had returned to his house on 17.11.1999 at about 8.00p.m., in the work spot and that his wife(P.W.1) had informed that P.W.2 her daughter was subjected to sexual assault by the accused. He further deposed that she (P.W.1) immediately took P.W2 to the Doctor Ashok Kumar, who had given first aid to her and as per his advise the victim girl was taken to Medical College Hospital, Tanjore from where Ex P1 complaint was preferred by his wife P.W.1 and that he had handed over M.O.1 to the police at the Medical College Hospital, Tanjore, which was recovered by the police under Mahazar.

4c. P.W.4 is the witness in Ex P2 observation Mahazar, which was prepared by P.W.16. P.W.15 is the then Inspector of Police, Vaduvur Police Station (in charge) who on the receipt of wireless information proceeded to the Tanjore Medical College Hospital on 18.11.1999 at 10.00 a.m and recorded the statement of P.W.1 and registered the case under Vaduvur Police Station Crime No.533/1999 under Sections 376 and 506 (ii) of IPC. Immediately, he had visited the place of occurrence and prepared Ex P2 observation Mahazar in the

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presence of P.W.4. He had drawn a rough sketch under Ex P11 and Ex P12 is the first information report. He had also recovered M.Os 2 to 5 blood stained cement floor, sample cement floor, blood stained sand and sample sand respectively in the presence of P.W.5. He has examined the witnesses and recorded their statements. He had taken the accused to the police custody on 13.12.1999 at 4.30p.m., and has recorded his voluntary confession statement in the presence of P.W.6. Ex P3 is the signature of P.W.6 in the confession statement of the accused. Thereafter, on 14.12.1999 at about 10.30 a.m., he had subjected the accused for potency test under Ex P16. Ex P17 is the letter of requisition given by P.W.15 to the Judicial Magistrate to send the blood sample and semen to the forensic science laboratory for chemical examination and P.W.16 is the successor of P.W.15. He has also examined the other witnesses and recorded their statements.

4d. P.W.7 is the headmaster of Primary Panchayat Union School at Vettrikadu. Ex P4 is the age certificate issued by P.W.7 stating that the date of birth of the victim girl as 25.6.1993. P.W.8 is the police constable through whom the accused was subjected to potency test. P.W.9 had produced the material objects connected with this case to the Medical College Hospital laboratory for chemical examination.

4e. P.W.10 is the doctor, who had examined P.W.2 on 18.11.1999 at about 1.00a.m., at Medical College Hospital, Tanjore. Ex P5 is the copy of the accident register. He had noticed a nail mark on the left hand of the victim girl P.W.2. P.W.11 is the doctor, who had examined the accused and issued Ex P6 declaring that the accused as potent. P.W.12 is the lady doctor, who had examined the victim girl but she has deposed before the Court that she has not seen any injury on the person of the victim girl or on any parts of the body and that the hymen of the victim girl was found in tact. But she would depose that the certificate issued by her to that effect was taken away by the hospital authorities. P.W.13 Dr.Ashok Kumar who had examined P.W.2 on 17.11.1999 soon after the occurrence and had given first aid, Ex P7 is the wound certificate. P.W.14 is the chemical analyst through whom ExP10 anyalyst's report was marked. According to him, he had examined the blood stained inskirt of the victim girl with that of the sample blood taken from the accused and has opined that blood stain in the inskirt of P.W.2 and the sample blood taken from the accused belongs to the same "O" group.

4f. P.W.17 is a Lab Technician in a private clinic at Mannargudi. He would depose that he had tested the sample blood of P.W.2 and has given a certificate stating that it

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belongs to "O" group and handed over the same to P.W.1, the mother of the victim P.W.2. P.W.18 is the analyst in the Regional Forensic Science Laboratory at Tanjore. He had also examined the material objects connected with this case and issued Ex P19 analyst report and Ex P20 serologist's report. P.W.16 after completing the formalities has filed the final report on 8.10.2000 under Sections 366A ,376(f) and 506(ii) of IPC.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, he would deny his complicity with the crime.

After going through the materials available on record before the trial Court by the prosecution including the oral and documentary evidence meticulously, the learned trial Judge has come to an unassailable conclusion that the charges levelled against the accused were not proved beyond any reasonable doubt and accordingly acquitted the accused from all the charges which necessitated the State to prefer this appeal.

6. Now the point for determination in this appeal is whether the findings of the learned trial Judge is full of manifest error or perverse in nature leading to miscarriage of justice,to warrant any interference from this Court?

7.Heard Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor appearing for the State and Mr.D.Veerasekaran, learned counsel appearing for the respondent and considered their respective submissions.

8. The Point:

P.W.2 is a minor aged 5 ½ years at the time of the occurrence. According to her evidence, the accused took her to P.W.5's house and committed the offence of rape. According to her, there was profuse bleeding from her genitalia after the occurrence. P.W.1 would also depose in the chief examination that she would find blood stain in the wearing apparels of P.W.2 and that she had handed over the inskirt of P.W.2 to the police when the victim was undergoing treatment at Medical College Hospital, Tanjore on the next day ie., on 18.11.1999. According to P.W.1, after her husband had returned home at about 7.00p.m., she took the victim to Dr. Ashok kumar,P.W.13, the local doctor at Mannargudi who had given first aid to the victim girl and referred to Tanjore Medical College Hospital. But P.W.13, Dr Ashok Kumar in his evidence has deposed that he was informed at the time, when P.W.2 was produced before him for treatment stating that some one had made an attempt to rape P.W.2 and that he had given ATS

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injection to the child. P.W.10 is the doctor, who had examined P.W.2 the victim girl on 18.11.1999 at 1.00p.m at Tanjore Medical College Hospital. He had seen only a nail mark on the left hand of the victim girl P.W.2 and has opined that the said injury is simple in nature. The victim girl P.W.2, who was also subjected to medical examination by a lady doctor P.W.12 on 24.12.1999 but unfortunately the certificate issued by P.W.12 was not produced by the prosecution before the trial Court. P.W.12 doctor has clearly stated in her evidence that the hymen of the victim girl was found in tact and she could not see any nail mark or bite mark on the person of the victim girl.

9. It is the case of the prosecution that the blood stain found in the inskirt of the victim girl, which was recovered at the time when she was undergoing treatment at the Medical College Hospital, Tanjore. On analysis found that it belongs to "O" group and the blood sample taken from the accused also belongs to "O"group. But unfortunately in this case, there is no evidence on record to show that the blood stain found in M.O.1 inskirt belongs to the victim girl and the inskirt got stained during the occurrence. The doctor viz P.W.13 Ashok Kumar, who had seen the victim girl for the first time after the occurrence,according to the prosecution, P.W.10 another doctor who had examined the victim girl on the next day ie., 18.11.1999 at 1.00p.m., have not deposed before the Court that they have seen blood injury in any parts of the body of the victim girl during their examination. The evidence of the lady doctor P.W.12 , seven days after the occurrence, had deposed before the Court that she found the hymen of the victim girl in tact and had not seen any injury over any part of the body of the victim girl P.W.2.

10. The prosecution has seized the blood stained cement piece and also sample piece and blood stained sand and sample sand from the place of occurrence and send for chemical examination and filed analyst's report through P.W.18. According to P.W.15, those material objects viz., M.O.2 to M.O.5 were seized from the place of occurrence on 18.11.1999 at about 4.15p.m., in the presence of P.W.5. But P.W.2 the victim girl in her evidence in the cross examination would admit that even on the date of the occurrence ie., on 17.11.1999 itself, the place of occurrence was washed away by the owner of the house. So the evidence of P.W.15 that he had collected blood stained cement piece and the blood stained sand from the place of occurrence cannot at all be believed.

11. The accused was also subjected to medical test by P.W.16 and the doctor who had examined the accused is P.W.11

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who had not seen any external injury on the male organ of the accused. Even according to P.W.10, the doctor who had examined the victim girl on 18.11.1999 at about 1.00 a.m., he could see only a nail mark on the left hand of the victim girl.

12. Under such circumstances, there is absolutely no evidence to link the accused, who is admittedly an Engineering student at the time of the occurrence with this heinous crime. The prosecution, as rightly observed by the learned trial Judge, has miserably failed to prove the guilt of the accused beyond any reasonable doubt . Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge, which is not perverse in nature leading to miscarriage of justice to warrant any interference from this Court. Point is answered accordingly.

13. In fine, the appeal is dismissed confirming the Judgment in S.C.No.230/2001 dated 22.09.2003 on the file of the Assistant Sessions Judge, Thiruvaur.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Sessions Judge., Thiruvarur.

2. -do-the Principal and Sessions Judge,Thiruvarur.

3. The Public Prosecutor, High Court, Madras

4. The Inspector of Police, Vaduvur Police Station,Thiruvarur District.

5.The District Collector, Thiruvarur.

6.The Director General of Police, Chennai.

+1cc Mr.D.Veerasekaran, Advocate Sr 49157

NSM (CO)
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